

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 660 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BHARWAD KHETABHAI POPATBHAI

Versus

STATE OF GUJARAT

Appearance:

MS SONAL D VYAS for Petitioner

MR HH PATEL, APP, for respondents.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/12/1999

ORAL JUDGEMENT

#. The petitioner was issued with a notice under Section 59 of the Bombay Police Act, 1951 on April 20, 1998 to show cause why he should not be externed from the districts of Bhavnagar, Amreli, Ahmedabad, Rajkot, Junagadh and Surendranagar by Sub-Divisional Magistrate, Mahuva. The allegations in the notice were that he is always armed with some weapon or stick, that he intimidates and threatens people and extorts money and, as a result thereof, an atmosphere of fear and insecurity

is spread. The authority also considered an offence registered against the petitioner vide C.R. No.102/97 of Talaja Police Station.

#. After the above notice, externment proceedings were conducted and an order came to be passed by Sub-Divisional Magistrate, Mahuva, on March 22, 1999, externing the petitioner from Bhavnagar, Amreli, Ahmedabad, Rajkot, Junagadh and Surendranagar districts for a period of two years, in exercise of powers under Section 56 (b) of the Bombay Police Act.

#. The contents of the order can be translated thus:

"ORDER:

Pursuant to complaint against the opponent under Section 56(b) of the Bombay Police Act, 1951, the opponent is hereby externed for a period of two years from Bhavnagar, Amreli, Ahmedabad, Rajkot, Junagadh and Surendranagar districts.

Signed and sealed today, the 22nd March, 1999.

Mahuva Sd/-
Sub-Divisional Magistrate,
Mahuva."

#. The above order is the subject matter of challenge before this Court. The petitioner has raised numerous contentions to assail the order. The important contentions can be briefly stated as under :-

4.1 The order is a non-speaking and unreasoned order. It reflects non-application of mind and it is arbitrary in nature.

4.2 The order is passed after a delay of about 11 months from the date of notice and, therefore, there is delay.

4.3 The externment is a drastic remedy which should be resorted to only under rare cases, sparingly.

4.4 The appellate authority has placed reliance on a material which was not before the externing authority and which has not been relied upon by the externing authority. That material does not form part of the notice also.

#. Ms. Vyas, learned advocate appearing for the petitioner has elaborately argued the matter on all the grounds. She has drawn attention of this Court to the decision of this Court in the case of Jorubhai v. State of Gujarat, 1996(1) GLR 53 and submitted that exercise of powers under Section 56 of the Bombay Police Act is quasi-judicial in nature and the order ought to have been a speaking one. She has drawn attention of the Court to the order of the appellate authority wherein the authority has taken into consideration an offence registered against the petitioner which was not the subject matter of the notice and, therefore, the order would stand vitiated. She submitted that the petition may be allowed.

#. Mr. H.H. Patel, learned Additional Public Prosecutor, has opposed the petition.

#. The petition deserves to be allowed on the first ground alone. The impugned order of externment, if seen, runs into a few lines. It states no facts, no details of allegations, no details of material considered by the authority and no reasons for the need to extern the petitioner. There is not a word about the subjective satisfaction of the externing authority for the need to extern the man. In fact, the order runs in only one sentence, which says that pursuant to the complaint, the petitioner is directed to be externed from the districts named above. It is really shocking to come across such an order passed by an authority exercising powers which curtail the liberty of a citizen. Such cryptic order can, under no circumstances, be sustained as the basic requirement of Section 56 of Bombay Police Act, 1951, namely, the presence of reasonable grounds for believing that the person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code or any abatement of any such offence and the opinion of the officer that such witnesses are not willing to come forward to give evidence in public against such person, is missing in the order. In absence of such opinion being placed on record, the authority should not have and could not have passed the order. The order does not even refer to notice under Section 59 of the Bombay Police Act. There is no reference to reply to the notice, if any, of the externment proceedings, whether the allegations are found to have been proved, nothing! The order, therefore, deserves to be quashed and set aside on this count alone.

#. In the decision of hJioruba (supra) relied upon by Ms. Vyas, this Court has observed that the exercise of powers of externment proceedings is quasi-judicial in nature and the order must be speaking. The non-compliance of this requirement has vitiated the order and the petition, therefore, deserves to be allowed on this ground alone.

#. In the result, the petition is allowed. The order of externment dated 22nd March, 1999, passed by Sub-Divisional Magistrate, Mahuva, is hereby quashed and set aside. Rule is made absolute.

[A.L. DAVE, J.]

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